

Attorney Docket No: BU-096XX
Inventor(s): Caroline A. Genco et al.
Application No. 10/535,490
TC Art Unit: 1645/Examiner: Vanessa L. Ford
OA Date: 9/28/07/Resp. Date: 12/21/07

REMARKS

The Applicants note that the filing date still reads May 17, 2005 on the Office Action dated September 28, 2007. The Applicants are enclosing herewith a copy of the Decision on Petition Under 37 CFR 1.10(d), which established the proper filing date of this application to be May 18, 2005, and the Office is requested to correct its records appropriately.

The Applicants submit that all claims in the application are in condition for allowance and such action is requested.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

CAROLINA A. GENCO ET AL.

By: Holliday C. Heine
Holliday C. Heine, Ph.D.
Registration No. 34,346
Attorney for Applicant(s)

WEINGARTEN, SCHURGIN,
GAGNEBIN & LEBOVICI LLP
Ten Post Office Square
Boston, MA 02109
Telephone: (617) 542-2290
Telecopier: (617) 451-0313

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WEINGARTEN, SCHURGIN,
GAGNEBIN & LEBOVICI LLP
TEL. (617) 542-2290

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WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP
 TEN POST OFFICE SQUARE
 BOSTON, MA 02109

WEINGARTEN, SCHURGIN,
GAGNEBIN & LEOVICI LLP

In re Application of
 GENCO, Caroline A. et al.
 Application No.: 10/535,490
 PCT No.: PCT/US03/37013
 Int. Filing Date: 18 November 2003
 Priority Date: 18 November 2002
 Attorney Docket No.: BU-096XX
 For: IMMUNIZATION WITH ...
 AGAINST HEART DISEASE

DECISION ON

PETITION

UNDER 37 CFR 1.10(d)

This decision is in response to applicant's "Petition Under 37 C.F.R. §1.110(d) to Accord a Filing Date," filed on 27 April 2006. It has been treated as a petition under 37 CFR 1.10(d).

BACKGROUND

On 18 November 2003, applicant filed international application PCT/US03/37013, claiming a priority date of 18 November 2002. The deadline for entry into the national stage in the United States was thirty months from the priority date, 18 May 2005.

Applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by the basic national fee by Express Mail. The date-in on the Express Mail mailing label indicated 17 May 2005 and the papers were accorded the date-in as their receipt date.

On 07 December 2005, the Office mailed Notification of Acceptance (Form PCT/DO/EO/903) indicating that the application had a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 17 May 2005.

On 27 April 2006, applicant submitted a petition under 37 CFR 1.10(d) to correct the receipt date of the basic national fee.

DISCUSSION

Applicant argues that the application was submitted to the USPS on 18 May 2005. 37 CFR § 1.10(d) allows an applicant to petition to correct an incorrectly entered "Date In" of an Express Mail receipt and states that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

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(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1), (2) and (3). The petition was filed promptly and the papers in the file reflect the mailing label number. Applicant has supplied the Express Mail mailing label showing a stamp indicating 18 May 2005 and other applicant records indicating a deposit date of 18 May 2005.

Applicant supplied a declaration under PCT Rule 26/er during the international phase, but the declaration does not list the international application number. As such, it does not comply with 37 CFR 1.497(a)-(b). A new oath or declaration in compliance with 37 CFR 1.497(a)-(b) is required.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.10(d) is **GRANTED**.

The Notice of Acceptance (Form PCT/DO/EO/903) and Filing Receipt mailed 07 December 2005 are **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including issuance of a Notification of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the fee for furnishing the search fee, examination fee or oath or declaration later than 30 months from the priority date are required.

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292
Facsimile: 571-273-0459